IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2046 OF 2004

Paritosh Kumar Saha .. Applicant

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.Yadav with Subhash Jha i/b. Law Global for applicant

Ms.M.M.Deshmukh, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 29th September 2006.

P.C.

. Heard learned Advocate for applicant and learned A.P.P. for State. Rule. Heard

forthwith.

2. This application invokes this Court's jurisdiction under section 482 of Cr.P.C. to challenge the order passed by the learned Additional Chief Metropolitan Magistrate, 19th Court Esplanade, Mumbai to the extent that it imposes conditions while allowing Miscellaneous Application No.4 of 2004 preferred by the applicant herein.

3. Learned Advocate for the applicant submits that copy of this application has been served on respondent No.3. None appears despite service. Respondent No.3 is the original complainant and it has filed a complaint C.C.No.476/Misc/01 in the Court of learned Metropolitan Magistrate alleging offence punishable under sections 78 and 79 of Trade and Merchandise Marks Act, 1958 and Section 63 of the Copyright Act, 1957.

4. Upon a direction to investigate, the report under section 156(3) was forwarded. It appears that a raid was conducted on the premises of the applicant at Indore on 18th July 2003 and the panchanama records seizure of 558 gunny bags of Soyabari and 6100 empty gunny bags.

5. The applicant, thereupon, preferred an application bearing No.4 of 2004 invoking the trial court's power under section 451 of Cr.P.C. In other words, application was for return of property. Learned Magistrate after hearing parties allowed the application but with a condition that except 1100 empty gunny bags and one gunny bag containing Soya bari as sample rest all bags be returned to applicant on his executing bond in the sum of Rs.2 lakhs with one surety in the like amount and with an undertaking that the applicant would not sell, transfer, alienate or dispose of the property in any manner

and shall produce the same as and when ordered by the trial court.

6. The applicant is aggrieved by the condition to give undertaking that the empty gunny bags and those containing Soyabari would not be alienated or sold or otherwise disposed of.

7. Submission of learned Advocate for applicant is that section 451 of Cr.P.C. as applicable under relevant time provided that any property produced before the criminal court during enquiry or trial can be kept in proper custody and/or arrangement can be made to this effect and if the property is subject to speedy and natural decay or it is otherwise expedient so to do, the Court may, after recording such evidence as it deems necessary, order it to be sold or disposed of.

8. He submits that once the learned Magistrate has observed that 1100 empty gunny bags seized by the police containing a brand name be preserved, then that itself would suffice, as it is a seizure under Panchanama. The other gunny bags containing soyabori can be returned. Once they are capable of being returned and the learned Judge thought it expedient so to do, then, it would not be appropriate to impose any conditions.

9. None has bothered to remain present for respondent No.3 original complainant. Considering that the complaint is alleging offences punishable under Trade and Merchandise Marks Act and Copyright Act and the issue is whether the mark in question has been infringed or not so also the copyright therein, in my view, interest of justice demanded that the gunny bags be returned without imposition of condition against its alienation. In the facts and

circumstances of this case and when the application was granted, then, the learned Judge ought not to have imposed any such condition. More so, when it is not contended that the empty gunny bags or those filled in with Soyabari are not subject to natural decay or their disposal would prejudice the complainant in any manner at the trial.

10. The application, therefore, is allowed. Order under challenge is set aside only to the extent that it imposes a condition against alienation or disposal. The condition would, therefore, stand deleted. Rest of the order is not interfered with. Rule is made absolute, accordingly.

(S.C.Dharmadhikari, J)